

Doc 90

May 2007

Mr Noel Dowling
Department of Justice Equality and Law Reform
94 St Stephen's Green
Dublin 2

**Re: Payment to Asylum Seekers and unaccompanied minors who fail to satisfy
Habitual Residence Condition**

Dear Noel,

I am writing to you in connection with payments to asylum seekers in direct provision. The following paragraphs outline the views taken by our respective Departments in previous correspondence.

The Secretary General of the Department of Social and Family Affairs wrote to your Department on 5 May 2006 in connection with payments to asylum seekers in direct provision. This letter adverted to the fact that the original Government decision leading to the setting up of the direct provision arrangements envisaged that asylum seekers would not have access to the social welfare system. On the introduction of direct provision, it was recognised that a small weekly payment was appropriate to provide for personal comforts. In the absence of any other arrangements being put in place to deliver such residual payments, this Department paid a basic supplementary welfare allowance (SWA) even though this necessarily meant that asylum seekers therefore had continued access to the social welfare system.

At the Cabinet Committee on Asylum Seekers of 11 December 2002, your Minister agreed to take over responsibility for these payments to asylum seekers in direct

provision. However, DSFA have continued to make these payments as an interim measure until such time as your Department put the necessary arrangements in place to make the payments.

In the meantime, the habitual residence condition (HRC) introduced from 1st May 2004 was designed to ensure that the State's social welfare system did not become overburdened by persons who have little or no connection with this country. This provision impacted on a number of categories of people, including:

1. Asylum seekers in direct provision centres operated by the Reception and Integration Agency;
2. Asylum seekers who have special needs and who are catered for in "step down" facilities, also operated under the Direct Provision system, but who were paid a full rate basic supplementary welfare allowance payment, currently €185.80 per week less a sum equivalent to the minimum contribution towards rent paid by rent supplement recipients currently €13 per week;
3. Unaccompanied minors who are in the care of the health boards and who received various rates of supplementary welfare allowance depending upon the type of accommodation provided.

The effect of this is that since 1st May 2004 payments have been made without proper legal authority in these cases, as SWA is not payable to the people in question because they do not satisfy the habitual residence condition. In these circumstances, the Secretary General requested your Department as a matter of urgency to put the necessary arrangements in place for the making of direct provision payments. Payment using the contractual arrangements that the RIA has with accommodation providers was suggested as one possible method.

In your Department's letter of 30 May 2006, you referred to inconclusive meetings held between officials of our Departments on these issues. In relation to the proposal that direct provision payments might be made by accommodation providers, you stated that this had been considered and rejected for the following reasons:

1. It would give accommodation providers an undue and inappropriate degree of control and power over their clients.
2. The RIA cannot unilaterally alter contracts with operators.
3. There would be administrative, security and accounting issues to surmount and in addition, accommodation providers would not have the expertise to make exceptional needs payments.
4. The HSE has responsibility for unaccompanied minors and DJELR would not be in a position to make direct provision payments in respect of these.

20/10/07

In conclusion, you stated that the only way that your Department could take over payments to asylum seekers would be to establish a system similar to that used by DSFA and that it would be difficult to justify the costs involved in doing this. On this basis, your Department was not in a position to take responsibility for direct provision payments.

As you will recall, consideration was given by this Department to providing a legislative basis for the payment of Direct Provision Allowance. Provision was made in the draft Social Welfare and Pensions Bill 2007 for payment of direct provision allowance under the Supplementary Welfare Allowance scheme. The effect of this provision would have been that this Department would have taken charge of direct provision allowance from the Department of Justice, Equality and Law Reform.

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This legislative provision was flagged to your Department who objected to direct provision allowance being put into primary legislation. The provision relating to DPA was subsequently dropped from the Social Welfare and Pensions Bill 2007.

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Given the foregoing, it would appear more than ever that the various payments made to asylum seekers are outside of the remit of the Supplementary Welfare Allowance scheme of this Department and that responsibility for dealing with those in asylum centres who cannot avail of social welfare entitlements by virtue of not satisfying the habitual residence condition, rests with your Department.

So DP payment is seen as a SWA payment!!!

see

30 Nov 2007

At this juncture, it would be useful for officials of both Departments to meet and discuss the ongoing administration of the direct provision allowance. In particular, we should discuss how direct provision allowance will be treated under the Irish Naturalisation and Immigration Service (INIS) which is provided for in your Department's direct provision allowance Immigration, Residence and Protection Bill.

Perhaps you could contact me at 071-9148426 to arrange a suitable time for a meeting

Yours sincerely

Don Watts
Principal Officer